



PUBLIC NOTICE

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Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))

By the Chief, Telecommunications and Analysis Division, International Bureau:

Pursuant to An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this public notice.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. § 1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>.

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review carefully the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

Acceptability for Filing Public Notice: The Application was placed on Public Notice on February 4, 2016. See Seabras-1 USA, LLC, Application for a license to land and operate a non-common carrier fiber-optic submarine cable network, the Seabras-1 cable system, connecting the continental United States and Brazil, File No. SCL-LIC-20160115-00002, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-00176S (IB, Feb. 4, 2016). No comments or oppositions were filed in response to the Public Notice.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. § 1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://www.state.gov/r/pa/prs/ps/2001/6951.htm>. The Department of Homeland Security (DHS) filed a Petition to Adopt Conditions to Authorizations and Licenses on November 10, 2016. DHS has no objection to the Commission approving authority to land and operate the Seabras-1 cable system, provided that the Commission condition approval on the commitment of Seabras-1 USA, LLC to abide by the undertakings set forth in the November 7, 2016 Letter of Assurances (2016 LOA) provided to DHS.

Actions Taken: (1) Grant of Cable Landing License to Seabras-1 USA, LLC for the purpose of landing and operating a non-common carrier fiber-optic submarine cable network, the Seabras-1 cable system, connecting the continental United States and Brazil; (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 CFR § 1.767(h)(1), in connection with the license; and (3) grant of the Petition to Adopt Conditions to Authorizations and Licenses filed on November 10, 2016 by the Department of Homeland Security.

Licensee Information: The Applicant for the cable landing license for the Seabras-1 cable system is Seabras-1 USA, LLC (Seabras-1 USA or Applicant).

Seabras-1 USA, a Delaware corporation, is a direct, wholly-owned subsidiary of Seabras 1 Bermuda Ltd., a Bermuda holding company, which in turn is a direct, wholly-owned subsidiary of Seabras Group, LLC (Seabras Group), a Delaware company. Seabras Group has two principal set of investors: (1) Partners Groups Seabras, LLC (PG Seabras), a Delaware entity, 58%, and (2) Seabras Project Holdings, LLC (Seabras Project Holdings), a Delaware entity, 42%.

Partners Group Holding AG (PG Holding), a Swiss private investment firm, will hold voting control of Seabras Group and Seabras-1 USA through PG Seabras. PG Holding is traded publicly on the SIX Swiss Exchange. Approximately 45% of PG Holding's shares are owned by its employees and partners, and no owners would have a ten percent or greater interest in Seabras-1 USA. PG Holding controls 11 funds that own, in the aggregate, a 51.17% indirect economic interest in Seabras-1 USA. Only one of these funds, Partners Group Direct Investments 2012 (EUR) L.P., Inc. (PGDI 2012), a Guernsey investment company, holds a 10-percent-or-greater indirect economic interest in Seabras Group and Seabras-1 USA (13.21% indirect economic and voting interest). PG Holding holds voting control for any shares or member interests held by each of the funds, including the aggregate 51.17% indirect voting interest in Seabras Group, comprised of the 13.21% indirect voting interest that it holds in Seabras Group and Seabras-1 USA through PGDI 2012, and an additional aggregate 37.96% indirect voting interest in Seabras Group and Seabras-1 USA through the other ten funds.

Seabras Project Holdings is a wholly-owned subsidiary of Seaborn Network Holdings, LLC (Seaborn Networks), a Delaware company. Mr. Larry Schwartz, a U.S. citizen holds a 24.27% direct ownership of Seaborn Networks, giving him a 10.19% indirect economic and voting interest in Seabras Group and Seabras-1 USA.

Cable Design and Capacity: The Seabras-1 cable system will consist of six fiber pairs with an initial capacity of 4 terabits per second (Tbps) per fiber pair and a total design capacity of 12 Tbps per fiber pair. The Seabras-1 system totals approximately 10,806 kilometers in length.

Ownership of the Cable System and Landing Points: The Seabras-1 cable system will be a point-to-point system connecting an existing cable landing station at Avon-by-the-Sea, New Jersey, with a new cable landing station, currently under construction, at Praia Grande, Brazil. The U.S. cable station is owned by Tata Communications (America) Inc. (Tata), and the Brazil cable station is owned and will be operated by Seabras 1 Brasil Ltda., a new foreign carrier in Brazil created specifically for the purpose of constructing, owning, and operating Seabras-1 in Brazil. Seabras-1 USA will own the portion of Seabras-1's wet segment in U.S. territory and in international waters, representing 96% of Seabras-1's wet segment. Seabras 1 Brasil Ltda., an indirect subsidiary of Seabras USA 1, will own the portion of Seabras-1's wet segment in Brazilian territory.

Applicant requests a waiver of section 1.767(h)(1) of the Commission's rules, which requires that "any entity that owns or controls a cable landing station in the United States" shall be applicants for, and licensees on, a cable landing license." 47 C.F.R. § 1.767(h)(1). Application at 15. According to the Applicant, Tata will not be able to affect significantly the operation of the Seabras-1, and it is not necessary for Tata to be a licensee to ensure compliance with the Cable Landing License Act, the Commission's cable landing rules, or the terms of the cable landing license. Id. Applicant also states that it has entered into two long-term agreements with Tata, the first granting an indefeasible right of use (IRU) to Applicant for a beach manhole and conduit connecting to Tata's cable landing station, and a lease agreement for collocation space in Tata's cable landing station. Application at 16. Applicants' equipment located at the station will be separately caged and controlled exclusively by the Applicant from its network operations center in Secaucus, New Jersey. Further, Applicant will provide direction to Tata in all matters relating to Seabras-1, including certain limited "remote hands" monitoring, testing, and maintenance services on Seabras-1's equipment. The IRU and the lease agreements have an initial term of 15 years and can be extended to 25 years. Id.

The purpose of the 1.767(h)(1) requirement is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license. See Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22194-95, paras. 53-54. While Tata is the owner of the cable landing station where the Seabras-1 cable system will land in the United States, we find that, based upon the agreements between Seabras-1 USA and Tata described above, Tata will not have the ability to significantly affect the operation of the cable system. Seabras-1 USA will retain effective operational authority and provide direction to Tata in all matters relating to the Seabras-1 cable system. Accordingly, we grant Seabras-1 USA a waiver of section 1.767(h)(1) and do not

Tata in all matters relating to the Seabras-1 cable system. Accordingly, we grant Seabras-1 USA a waiver of section 1.767(h)(1) and do not require Tata to be on this Cable Landing License.

Regulatory Status of the Cable: The Applicant proposes to operate Seabras-1 on a non-common carrier basis. Applicant states that the cable system will enhance competition and offer additional capacity on the U.S.-Brazil route, which is currently served by many other competing submarine cable facilities (Americas-II, GlobeNet, South American Crossing/Latin American Nautilus systems, AMX-1, SAM-1, and the planned Monet cable system). Application at 2. Applicant further states that it will not sell capacity indifferently to the user public but instead will sell bulk capacity to particular users - including carriers, Internet service providers, enterprises, and government users - pursuant to individually negotiated IRUs and capacity leases, the terms of which will vary depending on the characteristics and needs of the particular capacity purchased. Id.

Applicant has provided information and demonstrated that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976)(NARUC I), cert. denied, 425 U.S. 992 (1976). See also *Submarine Cable Landing License Report and Order*, 16 FCC Rcd at 22202-22203, paras. 69-70; *Review of Commission Consideration or Applications under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67 (Cable Landing License Act).

Conditions and Requirements: Applicant shall comply with the routine conditions set out in 1.767(g)(1)-(14) of the Commission rules, 47 C.F.R. § 1.767 (g)(1)-(14), and with the requirements of section 1.768 of the Commission's rules, § 1.768 (Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier).

We grant the Petition to Adopt Conditions to Authorizations and Licenses (Petition) filed in this proceeding on November 10, 2016 by the Department of Homeland Security. Accordingly, we condition grant of the application on Seabras-1 USA's abiding by the commitments and undertakings contained in the 2016 LOA provided to the Department of Homeland Security by Seabras-1 USA. A copy of the Petition and the 2016 LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20160115-00002 and accessing "Other filings related to this application" from the Document Viewing area.
